



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.03.1997
COM(97)106 final

95/0199 (CNS)
95/0201 (CNS)

Amended proposal for a
COUNCIL DIRECTIVE

on the right of third-country nationals to travel in the Community

Amended proposal for a
COUNCIL DIRECTIVE

on the elimination of controls on persons crossing internal frontiers

(presented by the Commission pursuant to Article 189a(2)
of the EC Treaty)

Explanatory memorandum

1. On 24 August 1995 the Commission presented - jointly - three proposals for Directives relating to the free movement of persons within the Community. To be more precise, the first proposal concerns the right of third-country nationals to travel in the Community¹ and the second concerns the elimination of controls on persons crossing internal frontiers,² while the third amends Directives 68/360/EEC and 73/148/EEC on the abolition of restrictions on movement and residence within the Community for certain categories of nationals of Member States and their families.³

On 23 October 1996 Parliament adopted for each proposal a legislative resolution endorsing the proposal and setting out a number of amendments.

The present amended proposals concern two of the three proposals, viz. the one relating to the right to travel of third-country nationals and the one relating to the elimination of controls. These new proposals incorporate the amendments accepted by the Commission during discussions with Parliament.

The third proposal, which adapts existing secondary legislation on movement in Member States for citizens of the Union and their families, is not the subject of an amended proposal since the Commission has not taken up any of the amendments proposed by Parliament.

2. The amendments to the two proposals which have been accepted by the Commission fall into two categories:
 - (i) those which, according to Parliament, usefully supplement the arrangements laid down in the proposals:
 - in the case of the proposal on the right to travel, one amendment inserts a new recital providing for equality of treatment regarding declaration of their presence in a Member State as between beneficiaries of the right to travel and citizens of the Union. A further amendment includes among the categories excluded from the scope of the Directive and listed in Article 1 persons exercising lucrative or non-lucrative activities. There is also an amendment that inserts a new Article 5a imposing in an expedient manner a clear obligation on beneficiaries of the right to travel (namely, to leave the Member State should they no longer satisfy the conditions enabling them to reside temporarily in that Member State);

¹ OJ No C 306, 17. 11.1995, p. 5; COM(95) 346 final - CNS 95/0199.

² OJ No C 289, 31.10.1995, p. 16; COM(95) 347 final - CNS 95/0201.

³ OJ No C 307, 18.11.1995, p. 18; COM(95) 348 final - COD 95/0202.

- in the case of the proposal on the elimination of controls on persons, two amendments concerning Article 3 are designed to improve the definitions of 'intra-Community flight' and 'intra-Community sea crossing' in order to align them on those laid down within the framework of the draft Convention on the crossing of the external frontiers of the Member States and within the Schengen Convention;
- (ii) those which, according to Parliament, will confirm the Community bases for the two proposals:
- one amendment inserts into a new first recital a reference to Article 3(d) of the EC Treaty, which thus more closely integrates the proposals into the framework of the internal market;
 - another amendment inserts the date of 31 December 1992 alongside the reference to Article 7a of the EC Treaty in the first recital of the Commission's initial proposals.

Amended proposal for a
COUNCIL DIRECTIVE

on the right of third-country nationals to travel in the Community

Text proposed by the Commission
COM(95) 346 final - 95/0199(CNS)
JO n° C 306 of 17.11.95 p. 5-8

Amendments by the Parliament

(unchanged unless mentioned below)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas Article 3 of the Treaty provides for an internal market characterized, inter alia, by the abolition, as between Member States, of obstacles to the free movement of persons and measures concerning the entry and movement of persons in the internal market;

Whereas Article 7a of the Treaty provides for the establishment of an internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas Article 7a of the Treaty provided for the establishment by 31 December 1992 of an internal market, to comprise an area without internal frontiers in which the free movement of good, persons, capital and services is ensured in accordance with the provisions of the Treaty;

Whereas in order to achieve this objective Member States will have to allow third-country nationals who are lawfully in the territory of another Member State to enter their territories for short stays; whereas if there were no such right to travel each Member State would have to consider the fact that there were people in other Member States who were not entitled to enter its territory, which might be an argument for maintaining controls at internal frontiers;

Whereas the approximation of Member States' laws on this question directly affects the establishment and functioning of the internal market;

Whereas in principle the registration of third-country nationals exercising their right to travel should not be subject to more stringent requirements than those applying in comparable situations to EU citizens;

Whereas the issue of a residence permit by a Member State to a third-country national, whereby the latter is authorized to live in that State, is an act surrounded by sufficient safeguards for the other Member States no longer to need to subject the person concerned to the requirement that he obtain a visa in advance from their own authorities and hence for them to grant him the right to travel; whereas, in any event, each Member State may expel the person concerned to the Member State which issued the residence permit, which is obliged to readmit him, if he stays unlawfully in its territory, if he does not fulfil the conditions governing the right to travel, or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas, where a third-country national who is not resident in the Community is in possession of a visa issued by a Member State which permits him to cross the external frontiers of all the Member States by virtue of its being valid throughout the Community and mutually recognized by the Member States for that purpose, each Member State enjoys sufficient safeguards for it to grant the person concerned the right to travel; whereas the same right must *a fortiori* be granted to third-country nationals who may cross the external frontiers without being subject to a visa requirement; whereas, in any event, each Member State is entitled to expel a third-country national if he does not fulfil the conditions governing the right to travel or if he represents a threat to public order or public security in that State, or to its international relations;

Whereas persons who exercise the right to travel should not become a burden on the social assistance system in the Member States they visit; whereas the right should therefore be subject to the condition that such persons have sufficient resources to undertake the trip;

Whereas this Directive forms part of a general body of Community and national provisions governing the legal position of third-country nationals in the Member States; whereas the scope of this Directive should accordingly be precisely defined,

Article 1

1. Member States shall grant third-country nationals who are lawfully in a Member State the right to travel in the territories of the other Member States in accordance with this Directive.

2. This Directive shall be without prejudice to rights

— which Community law confers on third-country nationals who are members of the families of citizens of the Union,

— which are granted to third-country nationals and to members of their families irrespective of nationality where, under an agreement between the Community, its Member States and the relevant third country, they enjoy rights of entry and residence in a Member State identical to those of citizens of the Union.

3. This Directive shall not affect provisions of Community or domestic law on

— stays other than for a short time, and

— access to employment and the taking-up of activities as a self-employed person

applicable to third-country nationals.

Introductory provision

1. Member States shall grant third-country nationals who are lawfully in a Member State the right to travel in the territories of the other Member States in accordance with this Directive.

2. This Directive shall be without prejudice to rights

- which Community law confers on third-country nationals who are members of the families of citizens of the Union,

- which are granted to third-country nationals and to members of their families irrespective of nationality where, under an agreement between the Community, its Member States and the relevant third country, they enjoy rights of entry and residence in a Member State identical to those of citizens of the Union.

3. This Directive shall not affect provisions of Community or domestic law on

- stays other than for a short time, and

- access to employment, the taking-up of activities as a self-employed person and other lucrative or non-lucrative activities

applicable to third-country nationals.

Article 2

For the purposes of this Directive:

1. 'right to travel' means the right to cross internal Community borders and to remain in the territory of a Member State for a short stay, or to travel onward, without the person concerned being required to obtain a visa from the Member State or States in whose territory the right is exercised;

2. 'residence permit' means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State, and which appears on the list referred to in Article 3 (4);

Article 2

Definitions

For the purpose of this Directive :

1. 'right to travel' means the right to cross internal Community borders and to remain in the territory of a Member State for a short stay, or to travel onward, without the person concerned being required to obtain a visa from the Member State or States in whose territory the right is exercised.

2. 'residence permit' means any document or authorization issued by the authorities in a Member State which permits a person to reside in that Member State for a period of more than six months;

3. 'visa within the meaning of point (3) of Article 2' means a visa which is valid throughout the Community and which is mutually recognized for the purpose of crossing the external frontiers of the Member States;
4. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 8 (1) of the Treaty establishing the European Community.

Article 3

1. Member States shall grant the right to travel to third-country nationals who hold a valid residence permit issued by another Member State.

Any such person may travel in the territories of the other Member States for a continuous period of not more than three months provided that he meets the following requirements:

- he must be in possession of a valid residence permit and a valid travel document,
- he must have sufficient means of subsistence, both to cover the period of the intended stay or transit and to enable him to return to the Member State which issued the residence permit, or to travel to a third country into which he is certain to be admitted.

2. Member States shall, in accordance with the conditions laid down in the Annex, readmit any person to whom they have issued a residence permit and who is unlawfully resident in the territory of another Member State, even if the validity of that permit has expired.

3. A third-country national who holds a residence permit issued by a Member State and who is exercising the right to travel may be expelled if he does not meet the requirements laid down in paragraph 1 or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.

4. Member States shall provide the Commission and the other Member States with a list of the documents they issue which are treated as equivalent to residence permits for the purposes of this Article, updating it as and when necessary.

The Commission shall publish the lists and any updates in the *Official Journal of the European Communities*.

Article 4

1. Member States shall grant the right to travel to third-country nationals who hold a visa within the meaning of point (3) of Article 2.

Such persons may travel in the territories of the Member States during the period of stay permitted by the visa, provided that they are in possession of a travel document bearing the valid visa and meet the requirement laid down in the second indent of Article 3 (1).

2. Member States shall confer the right to travel on third-country nationals who are exempted from visa requirements by all the Member States.

Such persons may travel in the territories of the Member States for a total of no more than three months within a period of six months from the date of first entry in the territory of one of the Member States, provided that they

are in possession of valid travel documents and meet the requirement laid down in the second indent of Article 3 (1).

3. Paragraph 2 shall also apply to third-country nationals who are subject to a visa requirement in a number of Member States.

However, the right to travel shall in their case be restricted to the territories of such Member States as have exempted nationals of the relevant third country from the obligation to hold a visa, unless they do hold a visa within the meaning of point (3) of Article 2.

In the latter event, the period of stay in the territories of the Member States which require a visa shall be limited to the period permitted by the visa.

4. The provisions of this Article shall not prevent any Member State from authorizing the stay in its territory of a third-country national beyond three months.

5. A third-country national allowed to enter the Community for a short stay who is exercising the right to travel may be expelled if he does not satisfy the conditions in paragraphs 1 or 2, according to whether or not he is subject to a visa requirement, or if he represents a threat to public order or public security in the Member State in which he is exercising the right to travel, or to its international relations.

Article 5

Member States may require persons exercising the right to travel to report their presence in their territories.

End of stay

1. Persons in a Member State on the basis of the right to travel granted in this Directive should leave the Member State's territory without delay if they no longer satisfy the applicable requirements.

2. If the fact that the applicable requirements will no longer to be satisfied is predictable, they should leave the Member State before they cease to satisfy those requirements.

Article 6

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1996. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 7

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 8

This Directive is addressed to the Member States.

ANNEX

Conditions for the readmission by the Member States of third-country nationals who are unlawfully resident in a Member State but who hold a residence permit for another Member State (Article 3 (2) of the Directive)

, Annex (-1) (new)

-1. Member States undertake to adhere strictly to the provisions of the European Convention on the Protection of Human Rights and Fundamental Freedoms and not to expel to another Member State persons who should be afforded protection in their State on the basis of this Convention.

1. These provisions on readmission are applicable to third-country nationals who hold a residence permit within the meaning of point (2) of Article 2 and who are exercising the right to travel but who are unlawfully resident in the territory of another Member State.

The provisions do not affect Member States' obligations under the Dublin Asylum Convention to readmit applicants for asylum who are unlawfully resident in another Member State.

2. Where a person covered by point 1 has entered one Member State from another Member State for the purposes of a short stay or transit under Article 3 (1) and is unlawfully resident there, that person must go without delay to the Member State for which he holds a residence permit unless he is authorized to go to another country to which he is certain to be admitted.

If a third-country national wishes to go to another country, he must provide documentary evidence that he may be admitted to that country, e.g. in the form of an entry permit or valid visa, and that he is in possession of the necessary resources, e.g. in the form of a ticket or other documentation that allows

him to travel, and cash or a bank deposit in order to secure his transportation and his residence in the country to which he may be admitted.

3. If a third-country national unlawfully resident in the territory of a Member State refuses to leave voluntarily, Member States are required to readmit him in accordance with the guidelines set out below.

If the person holds a valid residence permit for another Member State, the Member State which has issued the permit is required to readmit him.

Moreover, Member States must readmit a third-country national in accordance with Article 3 (2) within a period of up to two months after the expiration of the validity of the residence permit.

The obligation to readmit him is subject to the condition that a request for readmitting him shall be lodged within one month by the authorities becoming aware of the person's unlawful presence in the Member State.

4. The person is to be readmitted after a request has been made by the competent authorities in the requesting Member State showing that the person in question holds a valid residence permit for the readmitting Member State.

A Member State receiving a request in accordance with point 3 must reply to the request within eight days. If the Member State does not respond within that time, it will be deemed to have agreed to readmission, unless it has expressly requested a one-week extension of that time limit.

The Member State to which the request was addressed is required to take in, within a month at most, the person it has agreed to take back. That time limit may be extended by agreement between the two Member States concerned, upon submission by the requesting Member State of an explicit and justified application.

Member States are to exchange lists of authorities competent to consider requests for readmission and of points at borders where readmission can take place.

5. The financial costs entailed by readmission are to be met by the person concerned. Where the person is unable to meet the expenses, the expenses up to the point of readmission are as a rule to be met by the Member State requesting readmission.

**Amended proposal for a
COUNCIL DIRECTIVE**

on the elimination of controls on persons crossing internal frontiers

Text proposed by the Commission
COM(95) 347 final - 95/0201(CNS)
JO n° C 289 of 31.10.95 p. 16-17

Amendments by Parliament
(unchanged unless mentioned below)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas Article 3 of the Treaty provides for an internal market characterized, inter alia, by the abolition, as between Member States, of obstacles to the free movement of persons and measures concerning the entry and movement of persons in the internal market;

Whereas Article 7a of the Treaty provides for the establishment of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas Article 7A of the Treaty provided for the establishment, by 31 December 1992, of the internal market, to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas the establishment of the internal market consequently calls for the abolition of all controls and formalities for persons crossing internal frontiers; whereas, in this context, seaports and airports stand apart, as they serve both traffic with other Member States and traffic with non-member countries; whereas application of the freedom-of-movement principle should nevertheless result in the elimination of controls and formalities for persons taking an intra-Community flight or making an intra-Community sea crossing;

Whereas the Community and the Member States have decided to take the measures they deem essential for eliminating the underlying reasons for the application of frontier controls and formalities under national law;

Whereas the relevant accompanying measures have been introduced satisfactorily;

Whereas, in order to fulfil the clear and unconditional obligation enshrined in Article 7a, and in the interest of legal certainty, it is necessary in these circumstances to confirm that frontier controls and formalities within the Community are to be abolished;

Whereas this Directive should relate both to controls or formalities applied by public authorities and to those applied by other persons under national rules;

Whereas it is necessary to stipulate the conditions in which a Member State may temporarily reinstate controls at internal frontiers in the event of a serious threat to public policy or public security,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. All persons, whatever their nationality, shall be able to cross Member States' frontiers within the Community at any point, without such crossing being subject to any frontier control or formality.
2. The elimination of controls and formalities for persons crossing internal frontiers shall not affect the exercise of the law-enforcement powers conferred on the competent authorities by the legislation of each Member State over the whole of its territory, nor any obligations to possess and carry documents which are laid down by its legislation.

Article 2

1. A Member State may, in the event of a serious threat to public policy or public security, reinstate controls at its frontiers within the Community for a period of not more than 30 days. Any Member State taking such action shall immediately notify the Commission and the other Member States, supplying them with all the appropriate information.

2. Where the serious threat to public policy security lasts longer than 30 days, the Member State concerned may maintain the controls at its frontiers within the Community for renewable periods of not more than 30 days. Each renewal shall be decided after the other Member States and the Commission have been consulted.

At the Member State's request, the Commission and the other Member States shall treat in confidence the information it supplies to justify maintaining these controls.

3. The controls referred to in paragraphs 1 and 2 and the length of the period during which they are applied shall not exceed what is strictly necessary to respond to the serious threat.

Article 3

For the purposes of this Directive:

1. '*a Member State's frontier within the Community*' means:

- the Member States' common land frontiers, including the rail or road terminals for links by bridge or tunnel between Member States,
- their airports for intra-Community flights,
- their seaports for intra-Community sea crossings;

2. '*intra-Community flight*' means the movement of an aircraft between two Community airports, without any stopovers, and which does not start from or end at a non-Community airport;

3. '*intra-Community sea crossing*' means the movement between two Community ports, without any intermediate calls, of a vessel plying regularly between two or more specified Community ports;

2. '*intra-Community flight*' means the movement of an aircraft between two Community airports, without any stopovers outside the Community, and which does not start from or end at a non-Community airport;

3. '*intra-Community sea-crossing*' means the movement between two Community ports, without any intermediate calls outside the Community, of a vessel plying regularly between two or more specified Community ports;

4. 'Frontier control or formality' means:

any control, check, or inspection, whether in the form of a passport, a visa, or a similar document, or by the public authorities of a Member State or by other persons, under the national legislation of a Member State,

- any formality imposed on a person in connection with the crossing of an internal frontier and to be fulfilled on the occasion of such crossing.

Article 4

No later than two years after implementation of this Directive, and every three years thereafter, the Commission shall report on its application to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

Article 5

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1996. They shall immediately inform the Commission thereof and shall also transmit to it a table showing the correlation between each of the provisions of this Directive and the relevant provisions of national law, irrespective of whether these predate this Directive or are approved for the specific purpose of transposing it.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 6

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 7

This Directive is addressed to the Member States.

ISSN 0254-1475

COM(97) 106 final

DOCUMENTS

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11 10 06

Catalogue number : CB-CO-97-097-EN-C

ISBN 92-78-16748-7

Office for Official Publications of the European Communities
L-2985 Luxembourg